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7 TIMOTHY D. WILKINS,
8 Plaintiff,
9 v.
10 B. BAKER,
11 Defendant.

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13 Case No. 23-cv-01387-HSG

14 **ORDER OF DISMISSAL WITH LEAVE
15 TO AMEND**

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17 Plaintiff, an inmate at San Quentin State Prison, has filed a *pro se* action pursuant to 42
18 U.S.C. § 1983. His complaint (Dkt. No. 1) is now before the Court for review under 28 U.S.C. §
19 1915A. Plaintiff has been granted leave to proceed *in forma pauperis* in a separate order.

20 **DISCUSSION**

21 **A. Standard of Review**

22 A federal court must conduct a preliminary screening in any case in which a prisoner seeks
23 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.
24 § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims
25 that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek
26 monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),
27 (2). *Pro se* pleadings must, however, be liberally construed. *See United States v. Qazi*, 975 F.3d
28 989, 993 (9th Cir. 2020).

29 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
30 claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not
31 necessary; the statement need only “give the defendant fair notice of what the . . . claim is and the
32 grounds upon which it rests.”” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted).

1 While Rule 8 does not require detailed factual allegations, it demands more than an unadorned,
2 the-defendant-unlawfully-harmed-me accusation. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009).
3 A pleading that offers only labels and conclusions, or a formulaic recitation of the elements of a
4 cause of action, or naked assertions devoid of further factual enhancement does not suffice. *Id.*
5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a
6 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged
7 violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487
8 U.S. 42, 48 (1988).

9 **B. Complaint**

10 The complaint makes the following allegations. On September 16, 2022, Plaintiff filed a
11 grievance regarding his housing placement, Grievance No. 306199. On October 3, 2022,
12 defendant SQSP correctional sergeant B. Baker retaliated against Plaintiff for filing this complaint
13 by issuing him a rules violation report, in violation of the First Amendment prohibition on
14 retaliation for exercising protected conduct. *See generally* Dkt. No. 1.

15 The complaint is DISMISSED with leave to amend. The complaint proffers a conclusory
16 assertion without factual enhancement. A formulaic recitation of the elements of a cause of action
17 does not suffice to state a cognizable claim for relief. *Ashcroft*, 556 U.S. at 677–78. Plaintiff must
18 provide more than a conclusory statement that defendant Baker retaliated against him to state a
19 cognizable claim for First Amendment retaliation.

20 **CONCLUSION**

21 For the reasons set forth above, the Court DISMISSES the complaint with leave to amend.
22 Within twenty-eight (28) days of the date of this order, Plaintiff shall file an amended complaint
23 that addresses the identified deficiencies. The amended complaint must include the caption and
24 civil case number used in this order, Case No. C 23-01387 HSG (PR) and the words “AMENDED
25 COMPLAINT” on the first page. If using the court form complaint, Plaintiff must answer all the
26 questions on the form in order for the action to proceed. An amended complaint completely
27 replaces the previous complaints. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 925 (9th Cir.
28 2012). Accordingly, Plaintiff must include in his amended complaint all the claims he wishes to

1 present and all of the defendants he wishes to sue, and may not incorporate material from the prior
2 complaint by reference.

3 Failure to file an amended complaint in accordance with this order in the time provided
4 will result in dismissal of this action without further notice to Plaintiff. The Clerk shall include
5 two copies of the court's complaint form with a copy of this order to Plaintiff.

6 **IT IS SO ORDERED.**

7 Dated: 7/7/2023

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9 HAYWOOD S. GILLIAM, JR.
10 United States District Judge

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